

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.30.610 pertaining to surface water)	PROPOSED AMENDMENT
quality)	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On January 28, 2008, at 12:00 noon, the Board of Environmental Review will hold a public hearing at Conrad City Hall, 411 1/2 S. Main Street, Conrad, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., January 16, 2008, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES (1) The water-use classifications adopted for the Missouri River are as follows:

- (a) through (c)(iv) remain the same.
- (d) Marias River drainage except the tributaries and segments listed in (1)(d)(i) through (vi) B-2
- (i) through (ii)(C) remain the same.
- (iii) Dry Fork Marias River (mainstem) from Interstate 15 Highway 91 crossing near Conrad to Marias River and all adjoining tributaries..... B-3
- (iv) through (i)(iv) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: The board is proposing the amendment of ARM 17.30.610 in response to its statutory obligation to correct the classification of a water body when presented with facts indicating that it was originally misclassified. See 75-5-302, MCA. The amendment of ARM 17.30.610 is necessary because the board has information demonstrating that a segment of the Dry Fork of the Marias just upstream from the City of Conrad is currently misclassified as a B-2 water body. Under the B-2 classification, a water body must be suitable for the "growth

and marginal propagation of salmonid fishes and associated aquatic life." See ARM 17.30.624. Under the current classification system, the entire Marias River drainage, except for specific tributaries and segments set forth in ARM 17.30.610(1)(d)(i) through (iv), are classified as B-2. One of the exceptions to the B-2 classification is the mainstem of the Dry Fork of the Marias River located between the Interstate 15 crossing near Conrad and the Marias River. This segment is currently designated as a B-3 stream. ARM 17.30.610(1)(d)(iii). Under the B-3 classification, the waters need only be suitable for the growth and support of non-salmonid (i.e., warm water) fishes. ARM 17.30.625.

The proposed amendment would extend the length of this B-3 segment of the Dry Fork of the Marias river approximately one mile upstream to the Highway 91 crossing. The department has collected temperature data and other information demonstrating that this additional one-mile segment does not support the "marginal propagation of salmonid fish" that is necessary under its current B-2 classification. The board is therefore proposing to change its classification to B-3.

Under 75-5-302, MCA, the board may not lower the classification of a water body unless it finds that the water body was originally misclassified. The department has provided evidence, consisting of photographs, temperature data, and fish data, demonstrating that this segment of the Dry Fork of the Marias River was misclassified at the time it received its B-2 designation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., January 28, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O.

Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State December 10, 2007.